# Supreme Court of the United States

OCTOBER TERM, 1945.

No. 564.

BOYD L. KITHCART, PETITIONER,

VS.

METROPOLITAN LIFE INSURANCE COMPANY, A CORPORATION, RESPONDENT.

**PETITION FOR REHEARING FOR CERTIORARI ON MISTAKE OF PETITIONER'S ATTORNEY.**

BOYD L. KITHCART,
*Petitioner.*

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Now Comes the petitioner and respectfully prays this Honorable Court to grant him a rehearing on his former petitions for certiorari for the reasons that petitioner is now prepared to expose the greatest insurance fraud in the United States, and can explain why respondent sells policies exclusively through agents (3) and refuses to sell policies by mail (17) so as to get control of any evidence at time of application which may prevent recovery on the policy; and for the further reason that the further conflicts between Federal law and Missouri law as herein

set up have so confused the petitioner's eminent attorney that he is incapable of understanding the legal difference between Counts I and II of Plaintiff's Petition For Reformation of Insurance Contract and For Recovery Thereon (3-26); and that such conflicts of law have induced said attorney to make the mistakes of pleading on pages 30 and 36 of Petitioner's Petition For Rehearing of Petition for Certiorari, in which said attorney by mistake has omitted the word "only" three times on said pages where he says "This is a suit on a contract, not on fraud (only)." And such conflicts of law have further induced said attorney to state on page 37 of said petition that he did not write the Petition for Reformation of Insurance Contract and Recovery thereon as set up in the Abstract of Record (1-23). This court has seen fit to grant relief on mistake of attorney as shown by the following authorities, to-wit:

> *Pacific Ry. Co.* v. *Mo. Pac. Ry.*, 111 U. S. 505, 4 S. Ct. 583, 28 L. Ed. 498; *Sanford* v. *White*, 132 Fed. 531: "Courts have thought it proper to grant relief in some cases of misunderstanding or misapprehension on the part of the attorney."

## I.

### On Res Judicata.

Said attorney does not seem to understand that only Count II, and not Count I, of Plaintiff's petition (3-26) states a cause of action on contract, and not on fraud. Only Count II sets up Petitioner's claim for recovery on the reformed contract of insurance. Only Count II sets up a different claim for recovery from the claim for recovery which was mistakenly supposed to exist on the policy as it stood at the time of the trial in 1933 of case number 8391 (59). The previous suits on the policy as it stood (5, 6, 7, 8, 9) have no effect of *res judicata* on petitioner's claim

for recovery on the reformed contract, where petitioner waits until after the court orders the separate parts of the contract to be joined together before he asks to recover thereon in Count II (25), and where the court waits to pass on the claim for recovery in Count II (25) until after the contract has been reformed as demanded in Count I thereof (24).

The conflict of laws as hereinafter set up has induced said attorney to misunderstand whether the claim for recovery should be stated in Count I or in Count II of plaintiff's petition (3-6). Said attorney believes from the conflicting laws mentioned that in Count I he should ask for recovery on the unreformed contract, before the court has reformed it. He believes that the Federal Court has no jurisdiction, that no decision in the Federal Court in this case will be *res judicata* if the cause is remanded to the state court. And he believes that it is necessary to ask to recover on the unreformed contract in Count I, because the Missouri State Courts have jurisdiction and authority to grant recovery without reforming the policy beforehand. If the Supreme Court does not remand the cause to the State Court, his demand for recovery on the unreformed contract in Count I is mere surplusage which does not bar recovery in Count II on the reformed contract. This theory of the case is misleading to the attorney and to the Court, because there is a probability that the Court might think that the claim for recovery on an unreformed contract has already been adjudicated in the Federal Court if the case is not remanded to the Missouri State Court. Petitioner asks that the demand for recovery on the unreformed contract (24-25) be stricken out as *res judicata* if the case is retained under Federal Jurisdiction and trial be granted on Count II which states the only cause of action on the reformed contract (25).

Said misunderstanding and mistakes of attorney were induced by the following conflicts of law, to-wit:

The first group of laws indicate that the plaintiff's cause of action on fraud in Count I and his cause of action on contract in Count II should be stated in separate counts, and not combined all in one count.

> Missouri Statutes of 1939, Section 917, page 228: "The plaintiff may unite in the same petition several causes of action, whether they be such as have been heretofore denominated legal or equitable, or both, where they all arise out of, First, the same transaction or transactions connected with the same subject of action * * *. But the causes of action so united— must be separately stated, with the relief sought for each cause of action, in such manner that they may be intelligently distinguished."
>
> *Hodgson-Davis Grain Co.* v. *Hickery*, 200 S. W. 438: "Under Rev. St., 1909, Sec. 1795, plaintiff cannot join in a single petition count based on cause of action *ex contracto*, and count based on cause of action *ex delicto*."

The second group of laws cited herein induced said attorney to believe that both plaintiff's causes of action on fraud and on contract could both be joined not only in the same petition, but in the same Count I, as follows, to-wit:

> *Smith Engineering Co.* (*Pennsylvania*) v. *Pray*, 61 F. 2d 687, affirming 58 F. 2d 926, and certiorari denied 53 S. Ct. 594, 289 U. S. 733, 77 L. Ed. 1482: "Court of equity, after reforming contract, may proceed to adjudicate rights of parties under reformed contract, although such rights would otherwise have been properly determinable in court of law."
>
> (D. C. Mo., 1938) *Holloway* v. *Federal Reserve Life Ins. Co.*, 21 F. Supp. 516: "The Federal Equity Court, having taken jurisdiction, will afford complete relief, and will do so without regard to precedents."

(C. C. A. Mo., 1918) *Fay* v. *Hill*, 249 Fed. 415, 161 C. C. A. 389: "A court of Equity having obtained jurisdiction of a suit wherein cancellation of a contract of sale was sought will retain jurisdiction to dispose of all controversies between the parties arising out of the transaction."

(C. C. A. Mo., 1906) *In re Blake*, 150 Fed. 279, 80 C. C. A. 167: "Court of equity having acquired jurisdiction, will grant complete relief."

*McGowan* v. *Parish*, 35 S. Ct. 543, 237 U. S. 285, 59 L. Ed. 955, reversing, 1912, *Parish* v. *McGowan*, 39 App. D. C. 184: "A cause properly brought in equity will be retained for all purposes."

Said attorney believed from the above authorities that the Federal Court was different from the Missouri Court in equity proceedings, and that for this reason Count I on fraud and Count II on contract need not be clearly distinguished in plaintiff's petition (3-25), by stating each cause of action in separate counts.

If the Federal Court retains jurisdiction of Petitioner's case, the policy and the sound-risk agreement set up in Count I of plaintiff's petition (10, and Exhibit A, 27, 29; B, 33) as separate documents should each be regarded as false representations which induced plaintiff to enter into the contract as set up in good faith in Count II thereof. If the case is remanded to the State Court, the request to recover on the unreformed contract (24, 25) under the belief that such unreformed contract is not *res judicata* where the Federal Court did not have jurisdiction thereof, should be stricken out, so that the contract may be reformed in Count I and recovered on in Count II, where such reformation is really necessary to protect the petitioner from respondent's fraudulent concealment of evidence which binds the respondent thereto.

Said mistakes of pleading on the part of said attorney do not clearly overcome the *res judicata* of previous suits where he believes that he should ask for recovery in Count I and also believes that he can set up the contract in Count I at the same time he sets up fraud therein. But the petitioner himself had other assistance in dictating said petition (3-26), and Count I is only intended to be of cause of action on fraud, and Count II is only intended to be a cause of action on contract so that if said demand for recovery in Count I be stricken out, it will not be *res judicata* if the case remains for trial in the Federal Court, or even if it be remanded to the Missouri State Court for hearing there.

II.

**On Limitations.**

Said petitioner's attorney made mistakes on pages 30 and 36 of his Petition for Rehearing where on pages 30 and 36 he says that plaintiff's reformation suit is founded on contract and not on fraud. It was a mistake to omit the word "only" three times after the three words of "fraud" on said pages. The entire suit is not based on contract, only Count II of plaintiff's petition (25) is based on the reformed contract. Before the two express contracts as represented by the policy and the sound-risk agreement have been reformed as demanded in Count I of said Plaintiff's Petition (25) by attachment together into one joint contract as mutually intended by both parties at time of plaintiff's application, each one of said purported contracts is only a false representation which induced the plaintiff to enter into the joint contract as presumed to be in good faith in Count II of said petition (25). Hence, Count I of Plaintiff's petition is grounded entirely on fraud. It was a mistake for said attorney in

speaking of the whole reformation suit not to distinguish clearly between Counts I and II, and specify that he only referred to Count II when he said that said cause was not grounded on fraud.

It is absurdly inconsistent for said attorney to make the mistake of saying that Count I is not grounded on fraud after he has devoted 34 pages of his petition for rehearing to very convincing argument and proof that Count I states a cause of action only on fraud. Such mistake does no harm to the respondent, because Count II demands recovery on the reformed contract, but such mistake does injure the petitioner by overlooking all the fraud in Count I which is intended to overcome the respondent's defense of limitations and laches. This Court should not allow such attorney's mistakes to go uncorrected where such mistakes are obviously incorrect even from the most casual reading of Count I in said plaintiff's petition (3-25). The Court did not permit such a mistake to go uncorrected in the following case, to-wit:

> *Sumner* v. *Rogers,* 90 Mo. 324, 2 S. W. 476: "Under the Code one cannot sue on one cause of action and recover on another. He cannot sue for an injury and recover on a contract, express or implied, or *vice versa.* * * * To permit the plaintiff to hold that the action was not an action for deceit, the trial court would stultify itself, and hold out a premium to counsel to commit a fraud on the court and opposite party, and there can be no certainty in pleading or practice."

The plaintiff's petition in Count I alleges that defendant made false representations (10-20) which prevented the policy and sound-risk agreement from being attached together at the time of delivery of the policy, and other representations (15, 16, 17) which prevented reformation thereof before the present suit was filed (10-20). Said

petition alleges defendant's fraud in negotiation of the contract, and in continuation of such fraud until the present suit was filed (10, 14, 15, 16, 17, 20). Thus Count I is certainly a cause of action on ground of fraud as shown by the following authority, to-wit:

> *Hess* v. *Appleton Mfg. Co.*, (Mo. App., 1912) 148 S. W. 179, 164 Mo. App. 153: "An action for false and fraudulent representations is *ex delicto*, and therefore cannot be said to be founded on contract, though the representations be in writing."

Said eminent attorney misunderstands and misapprehends the laws of pleading which apply to petitioner's causes of action (3-26). Whenever said attorney reads the Federal decisions heretofore set up, he believes that the Federal Equity Court authorizes him to ask for complete relief in Count I as he has done (25) on both causes for reformation and for recovery on the reformed contract. Said attorney mistakenly says that it is not necessary to plead petitioner's cause of action to recover on the reformed contract separately in Count II and thereby allow the trial court an opportunity to order the contract reformed before permitting recovery on it. The petitioner has insisted on Count II being on the reformed contract as separately set up in the petition (2-26) in belief that said attorney's opinion thereon is a mistake on his part.

It is absurdly inconsistent for said attorney to make the mistakes on pages 30 and 36 of Petitioner's Petition for rehearing in which he says three times that this is a suit on contract and not on fraud, and forgets to append the word "only" after the word fraud three times therein. He should state clearly that Count I of plaintiff's petition (3, 25) is only an action on fraud for the reformation of the policy and sound-risk agreement by joining them together by attachment as demanded in Count I (25). He

has proved that Count I only alleges fraud by attempting to invoke Sections 1012, 1014, and 1031 which apply to such fraud. Section 1012 postpones limitations until the damage has been ascertained or is capable of ascertainment. The plaintiff's petition alleges that plaintiff was injured (22) by not having admissible evidence of said sound-risk agreement which would bind the defendant in any legal proceedings on said policy. The conflict of law as set up on page 30 of Petitioner's Petition for Rehearing, in the first complete paragraph therein, is alleged by said attorney to have prevented petitioner from discovering that he was legally injured by non-attachment of the sound-risk agreement to the policy, because the Missouri law as represented to plaintiff was different from the Federal law invoked by respondent by removing the cause to the Federal Court (28 Pet. on Rehearing). Section 1031 postpones limitations until the improper act prevents commencement of the reformation suit, and said attorney has invoked section 1031 on the concealments of defendant's knowledge of the sound risk agreement and defendant's knowledge of R. G. Denison's authority to negotiate the sound-risk agreement which would make respondent responsible for his fraud in negotiating the same (22 Pet. for Rehearing). Said attorney also invokes section 1014 which allows petitioner 10 years to discover the facts of fraud, and five years thereafter to finish discovering the false representations of law before filing suit for reformation by all the allegations in his Petition for Rehearing (22 to 34) which prevented the discovery of the falsity of the representations of law until the decisions in 1940, 1941, and 1942 in his second equity suit were issued by the courts (28, Pet. for Rehearing).

It would have been correct for said attorney to state the very opposite of what his mistakes assert on pages

30 and 36, for this Count I is really nothing else except a cause of action on ground of fraud (3-25). If the request to recover on the yet unreformed contract be stricken out of pages 24 and 25, then Count I is strictly a cause of action on fraud and nothing else. Since Count I of plaintiff's petition (3-25) alleges all the petitioner's fraud which postpones limitations and laches, the petitioner objects to the mistakes and misunderstandings of said attorney which might cause the Supreme Court to overlook the respondent's fraud which prevented his causes of action to reform the contract and to recover thereon as reformed from accruing before facts of fraud were discovered on February 25, 1939, and before laws on the same fraud were discovered in 1940, 1941 and 1942 from the court opinions in his second equity suit (28 Pet. for Rehearing).

This petitioner approves everything stated by said attorney in the Petition for Rehearing except said Mistakes on pages 30 and 36 which might prevent instead of helping to invoke Sections 1012, 1014, and 1031 in Petitioner's favor on the issue of limitations and laches.

The same conflict between Missouri laws and Federal laws which prevented the Petitioner from discovering the falsity of R. G. Denison's representations of law as alleged in plaintiff's petition (20) has also confused said attorney and induced him to make all the said mistakes in pleading which petitioner objects to herein. Said conflict of laws has induced said attorney to misunderstand the requirements of equity pleading in this reformation suit, and he has been thereby induced to believe mistakenly that, if this case is remanded to the Missouri State Court for trial, it is proper to join fraud and contract both in Count I and omit Count II of Plaintiff's petition (3-26).

The following Missouri laws prevented petitioner from discovering the falsity of R. G. Denison's representations of law, until petitioner discovered that the Federal law is different therefrom in Petitioner's second equity suit in 1940, 1941 and 1942, 119 F. 2d 497. Herewith please note the Missouri laws which still confuse said attorney and induce him to make said mistakes in reliance on R. G. Denison's representations thereof, to-wit:

*Nixon* v. *German Ins.*, 69 Mo. App. 351: "Parties in contemplation of the contract, in their preceding acts, are not limited by restrictions in the policy to special authority of secretary or president of the company."

*Rickey* v. *German Guarantee Town Mut. Ins. Co.*, 79 Mo. App. 485: "Restrictions against waivers except in writing signed by secretary only refers to matters transpiring after issuance of the policy."

*Flournoy* v. *Traders Ins. Co.*, 80 Mo. App. 655: "A Clause in a fire policy to the effect that neither the agent who issued the policy nor any other person, excepting the secretary, has authority to waive, modify, or strike from policy any of the terms and conditions, being intended to operate as a limitation on the powers of agents to waive the terms and conditions of the policy after it has been issued, does not affect their powers to agree on the terms before the issuance of it, it referring to subsequent, and not preceding acts of the parties in relation to waivers of conditions of policy.'

*National Bank of Commerce of K. C.* v. *Flannigan Mills and Elevator Co.*, 118 S. W. 117, 268 Mo. 547: "Several written instruments pertaining to the same subject matter may be construed together."

*Nichols, Shepherd & Co.* v. *Kern*, 32 Mo. App. 1: "All instruments executed contemporaneously concerning the same subject, together constitute but one contract."

Plaintiff's petition alleges (20) that R. G. Denison represented the law the same as shown by the above Missouri Decisions. But the Federal Court decision in plaintiff's case, 119 F. 2d 497, was directly contrary to the Missouri Law as represented in said petition (20, 14, 21, 22) as follows, to wit:

> 119 F. 2d 497: "It clearly appears from these pleadings and proceedings that no such evidence as that said to have been fraudulently concealed would have been relevant to the issues made in the law suit. Plaintiff sued upon the policy only and could not have introduced the so-called 'instruments' in evidence in his case in chief. If the defendant introduced proof showing plaintiff was afflicted with dementia praecox for its bearing on the question whether his injury exclusively was caused by accident the 'instruments' described, if they had been produced, would not have been competent evidence in rebuttal."

The foregoing Missouri decisions allow the respondent more opportunity to defraud the plaintiff, because such authorities do not require the sound-risk agreement to be attached to the policy in order to bind the company thereto in any legal proceedings on the policy as it stood at times of previous suits thereon (7, 8, 9). The Federal decision, from which it is necessary to infer that attachment of the sound-risk agreement to the policy is necessary in order to bind both parties thereto, would best protect the plaintiff against fraud after attachment thereof to the policy.

The new Federal rules require the Federal Court to follow the Missouri law whenever it is different from the Federal law. But the Federal Court did not do so at the time of Petitioner's second equity suit in 1940, 1941, and 1942. Instead the Federal Court rendered a decision which would be most likely to protect the great majority

of insured persons against fraudulent concealment of the insurer's knowledge of waivers of any conditions of the policy, by requiring attachment thereof onto the policy.

The Respondent's home state of New York has a statute which forbids the respondent to waive any provision which requires the policy to contain the entire contract of insurance, as follows, to-wit:

> Thompson's Laws of New York St. of 1907, Insurance, Section 58, says: "Every policy of insurance issued or delivered within the state on or after the first day of January, 1907, by any life insurance corporation doing business within the state shall contain the entire contract between the parties, and nothing shall be incorporated therein by reference to any constitution, by-laws, rules, application, or other writings unless the same are indorsed upon or attached to the policy when issued. Any waiver of the provisions of this section shall be void."

Missouri has no such statute which prohibits the respondent from waiving the attachment of any written agreement upon the policy. The respondent has alleged that he has no remedy at law (24). Petitioner suggests that the Court follow the New York Law as above quoted which forbids a waiver of attachment of the application or sound-risk agreement upon the policy, because the facts alleged in said petition (16, 17, 21) show that such attachment thereof is necessary to protect the petitioner as well as the largest number of other insured persons against the fraud as alleged on said pages.

There are three kinds of misrepresentations (19, 20) which are alleged to be material in Plaintiff's reformation: First, the misrepresentations which induced plaintiff to sign the application and sound-risk agreement (11), Second, the misrepresentations which induced plaintiff to

accept the policy as evidence of the defendant's acceptance of his offer (10), without having his own signature or any agent's signature on either the application or sound-risk agreement attached to the policy (14, 15); Third, the misrepresentations which prevented and delayed the plaintiff from having the policy and sound-risk agreement reformed by attaching them both together into one joint contract (16, 17, 20). The Circuit Court of Appeals in its opinion (78) only took notice of the first representations (11) which induced plaintiff to enter into the contract; and overlooked the second group of misrepresentations (14, 15) which induced plaintiff to accept the policy as sufficient evidence of defendant's acceptance of his offer without having any proof as to the nature of said offer attached to his policy; and the said Court further overlooked all the third group of misrepresentations (16, 17, 20) which prevented plaintiff from having knowledge of defendant's knowledge which bound defendant to the Sound-risk agreement and fraud of Denison in negotiation thereof which was indispensable before he could reform the contract of insurance.

This petitioner has consulted and employed about twenty lawyers in this case. They have all warned him to stay out of the Federal Court, and all declared that they hated to try an insurance case in the Federal Court, because the conflict of laws as heretofore mentioned makes it uncertain how to plead any such case in said court. This petitioner has paid a large amount to his last attorney and yet said attorney on page 37 of Petition for Rehearing denies that he has written a petition for reformation, and admits that he left the task to the petitioner and other assistants. None of the eminent attorneys so consulted can understand such conflict of laws, and the petitioner herewith presents said mistakes and misunder-

standings of said attorneys for the court to correct and harmonize as best it can.

There has been no lack of diligence on the part of this petitioner in seeking reformation of his contract of insurance. He has requested every lawyer who ever worked for him to reform the policy, but absolutely every attorney employed by him has stubbornly refused to reform said policy, except the last one, and assured this petitioner that reformation was not necessary to bind the company after the respondent represented that it had waived attachment of the sound-risk agreement to the policy. The last attorney has stubbornly refused to correct the absurdly inconsistent mistakes on pages 30 and 36 of said petition for rehearing for certiorari.

This petition for rehearing on Mistake of said attorney M. J. O'Donnell is dictated and filed without his knowledge or consent, without collaboration with him in any way, and without collusion with him at all.

The fact that the lower courts decided against this petitioner was due entirely to the mistakes of said attorney. It is the mistake of said attorney on page 7 of Petition for Reformation which says "said evidence was ruled out by the court as inadmissible in said action at law." Said mistake consisted in only making such a general statement instead of pleading the important particulars. Plaintiff objected to said attorney's absence of particulars, and said attorney refused to allow plaintiff to insert the necessary particulars as to why said sound-risk agreement was not admissible in evidence at time of trial in 1933. There are other allegations in said petition (9, 10, 21) which show more in particular that said evidence was ruled out only because of the absence of any defendant agent's signature thereon, and said attorney stubbornly insisted that it was not necessary

to emphasize said particulars by stating them plainly on page 7 of said petition. Plaintiff objected repeatedly to said attorney about the omission of said particulars and warned said attorney that the omission thereof might cause the court to misunderstand the nature of defendant's objection to said evidence and the court's ruling on the admissibility of said evidence, and thereby makes said ruling appear to make the cause of action for reformation to accrue at said time.

And sure enough the Circuit Court seized on said general statement without knowing said particulars or finding them on the other pages mentioned, and mistakenly jumped to the wrong conclusion that plaintiff's cause of action for attachment of the sound-risk agreement to the policy accrued in 1933. The Circuit Court says in its opinion (76),

> "The reasons given for the present attempted reformation is that the insured has been denied the right in his previous litigation to make proof of this special provision as part of his contract."

Said Circuit Court overlooks the allegations that defendant waived Provision 2 in regard to prior agreements (14, 20) and then continues as follows:

> "in view of the clause in the policy that 'No change in this policy shall be valid unless approved by an executive officer of the company and such approval be endorsed thereon.' The petition shows on its face however, that the denial had been made as far back as 1933, by the insured's objection and the trial court's ruling in the action initially brought on the policy, from which the insured took no appeal."

Said attorney's mistake in omitting said particulars has confused all the courts and misled them to believe that plaintiff already had the evidence ready to introduce at the time of trial in 1933. But if the Court will please pay closer attention to the reasons why said sound-risk agreement was ruled out as inadmissible, it will instantly perceive that plaintiff did not have any knowledge of defendant's knowledge of said sound-risk agreement which would bind defendant thereto in any legal proceedings at said time, even for reformation thereof, as alleged in plaintiff's petition (9, 10, 16, 17, 21). It is clear from said petition for reformation that plaintiff did not yet have any knowledge of the defendant's knowledge of said agreement and was not yet in position to prove that defendant was bound thereby in any legal proceedings for either reformation or recovery in 1933.

The plaintiff alleged that he could not discover until 1942 from the court opinions in 119 F. 2d 497 as issued in 1940, 1941 and 1942, that defendant's agent's signatures on said sound-risk agreement were not relevant unless and until said agreement was attached to the policy (14, 19, 22). But said mistake of said attorney in omitting said particulars about the absence of defendant agent's signatures (9, 10, 21) and plaintiff's ignorance of defendant's knowledge of said agreement (16, 17, 19) has confused the courts and made it appear that plaintiff had already discovered from the court's ruling in 1933 that said sound-risk agreement needed to be attached to the policy in order to bind the company thereto, although the court did not pass on the question of attachment thereof in 1933.

Said Circuit Court and this Court could not reasonably decide that plaintiff's cause of action accrued in 1933 merely on the denial of the admissibility of said evidence,

if it had examined more closely into this matter and found that the plaintiff's ignorance that the defendant had knowledge of the sound-risk agreement was the only existing reason for the inadmissibility of said evidence which was revealed to the plaintiff in 1933 by the defendant's objection or the court's ruling thereon.

This same law firm which now represents the respondent was the same draft board in part in 1918 which then prevented petitioner from being sent to camp as a wrestling instructor, although he was professional featherweight wrestling champion of the world with 15 years experience as shown in his questionnaire, by sending him to a limited service camp merely as a clerk because of his defective vision, where the fact that his brother had become insane in overseas military service induced the medical board in said camp to give him a mistaken temporary discharge, subject to further call to service, near the end of the war, on ground of a mistaken entry of "dementia praecox" (6, 9) without his consent or collusion in any way, which unfortunate blunder the respondent took advantage of in order to avoid paying his insurance claim in 1933.

This same respondent which aroused prejudice against petitioner in its oral arguments for having been temporarily discharged from the army, used the same clause 9 in the policy, not only to avoid petitioner's claim because of military service (7), but to avoid many other soldier's claims because of military service, and to lapse the policies of many soldiers in 1918, and thereafter refused to reinstate the soldiers at the former premium rates after the war, thereby retaining the premiums already collected; and this same clause 9 is still used for the unpatriotic purpose of lapsing policies and avoiding claims of veterans.

It will be more patriotic for this court to realize that an important matter to veterans is involved in this suit for reformation.

Wherefore, this petitioner prays that he be given a rehearing on his Petition for Certiorari, and also on his Petition for Rehearing thereof, that the Court strike out the request for recovery in Count I of his petition for reformation and wait until Count II for recovery on the reformed contract after it has been reformed, further that the word "only" be added to the words "fraud" mentioned on pages 30 and 36 of said Petition for rehearing so as to show clearly that Count I is only grounded on fraud, and that Count II is only grounded on contract, and thus eliminate the confusion as to which count is a cause of action on contract, or on fraud, and clear up the confusion for all twenty of this petitioner's attorneys to whom petitioner has paid very large sums of money to try to solve this conflict of laws on attachment where the Respondent breached its own Provision 2 in the policy by not attaching the sound-risk agreement to the policy at the times of all previous suits when it knew that such sound-risk agreement should be attached to the policy at all said times.

Signed only by the petitioner himself.

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